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10/774,352	02/06/2004	Gerd Scharninghausen	ESN-45	5252
26875 7590 07/23/2008 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202				
EXAMINER EWALD, MARIA VERONICA				
ART UNIT		PAPER NUMBER		
1791				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/774,352

**Applicant(s)**

SCHARNINGHAUSEN ET AL.

**Examiner**

MARIA VERONICA D. EWALD

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3.5 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3.5 and 8-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 3, 5, 8 – 10, 12 – 13, 15 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Volkl (U.S. 6,390,799). Volkl teaches a portioning device for portioning a bulk material, comprising: a forming space adapted to be filled by a mass of the bulk material, the forming space (item 53 – figure 3) bounded by a wall (figure 3) for forming the mass, the wall including a slit and an output opening (item 63 – figure 3); and a cutting device for portioning the mass filled into the forming space into a plurality of mass portions (item 65 – figure 3), the cutting device having a cutter that is at least partially introducible through the slit (figure 3) into the forming space, and each of the plurality of mass portions being output from the forming space through the output opening; wherein the slit extends far enough through the wall so that the cutter can cut completely through a cross section of the forming space (figure 3; column 6, lines 29 – 35); wherein the cutting device is introducible into the forming space in a direction that lies approximately perpendicular to the direction in which the mass is filled into the forming space (figure 3); wherein the forming space has a filling opening through which the mass can be filled into the forming space (item 57 – figure 3); wherein the forming

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space has a geometry matched to the form of an end product (column 4, lines 1 – 15); wherein the forming space is defined inside a tube (item 53 – figure 3) through which the mass is axially transportable (figure 3).

With respect to claims 8 – 10, 12 and 17, the reference also teaches that the cutter is introducible into the forming space at a place such that each of the plurality of mass portions formed, when the cutter is introduced, is supported by at least part of the wall (figure 3); wherein the slit is spaced apart at a distance from an output opening of the forming space such that a section of the forming space corresponds at least approximately to the size of each of the plurality of mass portions (figure 3); wherein the wall is substantially cylindrical and the slit almost completely penetrates the wall (figure 3); wherein there are means for fastening the cutting device as an attachment to a device for transporting and/or mincing bulk material (figure 1; column 1, lines 15 – 25; column 4, lines 60 – 67); wherein the geometry has a cross section that is oval (column 4, lines 1 – 5).

With respect to claims 13 and 15, Volkl teaches a device for transporting and/or mincing bulk material, comprising: a forming space adapted to be filled by a mass of the bulk material, the forming space bounded by a wall (item 53 – figure 3) for forming the mass, the wall including a slit and an output opening (item 63 – figure 3); and a cutting device for portioning the mass filled into the forming space into a plurality of mass portions (item 65 – figure 3), the cutting device having a cutter that can be introduced through the slit at least partially into the forming space, and each of the plurality of mass portions being output from the forming space through the output opening (figure 3);

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wherein the slit extends far enough through the wall so that the cutter can cut completely through the cross section of the forming space (figure 3); wherein there are means for transporting the mass, the means for transport being discontinuously operable, and the timing of the discontinuous operation cooperating with the introductory motion of the cutter into the forming space for portioning the mass into the plurality of mass portions (column 6, lines 29 – 44).<sup>1</sup>

With respect to claim 20, Volkl teaches a method for portioning a bulk material, the method comprising: continuously filling a forming space by a mass of the bulk material, the forming space having a geometry to match the form of an end product (item 53 – figure 3); forming the mass by means of a wall and an output opening in the wall (item 53 – figure 3); portioning the mass filled into the forming space into a plurality of mass portions by introducing a cutter into a slit of the forming space, said slit extending far enough so that the cutter can cut completely through the cross section of the forming space (item 65 – figure 3; column 5, lines 60 – 67; column 6, lines 29 – 40); and outputting the plurality of mass portions from the forming space through the output opening (column 5, lines 60 – 67; column 6, lines 29 – 40 and 45 – 60).

Claims 1 –3, 5, 8 – 10, 12 – 13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosenstone, et al. (U.S. 2,101,755). Rosenstone, et al. teach a portioning device for portioning a bulk material, comprising: a forming space adapted to be filled by a mass of the bulk material, the forming space (figure 1; column 1, lines 30 – 40) bounded by a wall (figure 1) for forming the mass, the wall including a slit and an

output opening (figure 1); and a cutting device for portioning the mass filled into the forming space into a plurality of mass portions (item 16 – figure 1), the cutting device having a cutter that is at least partially introducible through the slit (figure 1) into the forming space, and each of the plurality of mass portions being output from the forming space through the output opening; wherein the slit extends far enough through the wall so that the cutter can cut completely through a cross section of the forming space (figure 1); wherein the cutting device is introducible into the forming space in a direction that lies approximately perpendicular to the direction in which the mass is filled into the forming space (figure 1); wherein the forming space has a filling opening through which the mass can be filled into the forming space (column 2, lines 28 – 30); wherein the forming space has a geometry matched to the form of an end product (figure 1); wherein the forming space is defined inside a tube (item 7 – figure 1) through which the mass is axially transportable (figure 1).

With respect to claims 8 – 10, 12 and 16, the reference also teaches that the cutter is introducible into the forming space at a place such that each of the plurality of mass portions formed, when the cutter is introduced, is supported by at least part of the wall (figure 1); wherein the slit is spaced apart at a distance from an output opening of the forming space such that a section of the forming space corresponds at least approximately to the size of each of the plurality of mass portions (figure 1); wherein the wall is substantially cylindrical and the slit almost completely penetrates the wall (figure 1); wherein there are means for fastening the cutting device as an attachment to a device for transporting and/or mincing bulk material (figure 1; column 1, 40 – 55; column

2, lines 1 – 20); wherein the geometry has a cross section that is substantially rotationally symmetrical (figures 1 and 2).

With respect to claim 13, Rosenstone, et al. teach a device for transporting and/or mincing bulk material, comprising: a forming space adapted to be filled by a mass of the bulk material, the forming space bounded by a wall (figure 1) for forming the mass, the wall including a slit and an output opening (figure 1); and a cutting device for portioning the mass filled into the forming space into a plurality of mass portions (item 16 – figure 1), the cutting device having a cutter that can be introduced through the slit at least partially into the forming space, and each of the plurality of mass portions being output from the forming space through the output opening (figure 1); wherein the slit extends far enough through the wall so that the cutter can cut completely through the cross section of the forming space (figure 1).

Claims 1 –3, 5, 8 – 13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ackerman (U.S. 2,500,973). Ackerman teach a portioning device for portioning a bulk material, comprising: a forming space adapted to be filled by a mass of the bulk material, the forming space (figure 1) bounded by a wall (figure 1) for forming the mass, the wall including a slit and an output opening (figure 1); and a cutting device for portioning the mass filled into the forming space into a plurality of mass portions (items 22 and 24 – figures 6 and 7), the cutting device having a cutter that is at least partially introducible through the slit (figures 1, 6 and 7) into the forming space, and each of the plurality of mass portions being output from the forming space through the

output opening; wherein the slit extends far enough through the wall so that the cutter can cut completely through a cross section of the forming space (figure 1); wherein the cutting device is introducible into the forming space in a direction that lies approximately perpendicular to the direction in which the mass is filled into the forming space (figure 1); wherein the forming space has a filling opening through which the mass can be filled into the forming space (figure 1); wherein the forming space has a geometry matched to the form of an end product (figure 1); wherein the forming space is defined inside a tube (item 10 – figure 1) through which the mass is axially transportable (figure 1).

With respect to claims 8 – 12 and 16, the reference also teaches that the cutter is introducible into the forming space at a place such that each of the plurality of mass portions formed, when the cutter is introduced, is supported by at least part of the wall (figure 1); wherein the slit is spaced apart at a distance from an output opening of the forming space such that a section of the forming space corresponds at least approximately to the size of each of the plurality of mass portions (figure 1); wherein the wall is substantially cylindrical and the slit almost completely penetrates the wall (figure 1); wherein the cutter is a two-bladed, rotatable cutting knife (items 22 and 24 – figures 4 and 5; column 3, lines 20 – 65); wherein there are means for fastening the cutting device as an attachment to a device for transporting and/or mincing bulk material (figure 1; column 3, lines 1 – 30); wherein the geometry has a cross section that is substantially rotationally symmetrical (figures 1 and 4 – 5).

With respect to claim 13, Ackerman teaches a device for transporting and/or mincing bulk material, comprising: a forming space adapted to be filled by a mass of the



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bulk material, the forming space bounded by a wall (figure 1) for forming the mass, the wall including a slit and an output opening (figure 1); and a cutting device for portioning the mass filled into the forming space into a plurality of mass portions (item 22 and 24 – figures 1 and 4 – 5), the cutting device having a cutter that can be introduced through the slit at least partially into the forming space, and each of the plurality of mass portions being output from the forming space through the output opening (figure 1); wherein the slit extends far enough through the wall so that the cutter can cut completely through the cross section of the forming space (figure 1).

***Claim Rejections – 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 16 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Volkl. Volkl teaches the characteristics previously described but do not specifically teach that the cutter is a rotating two-bladed knife and that the geometry is substantially cylindrical and symmetrical.

However, Volkl does teach that the cutting device can be modified and altered depending on the user's preference. For example, Volkl teaches that it is possible to use a disk-like cutting device, wherein a continuous rotary movement of the cutting device portions the meat (column 4, lines 45 – 60). Furthermore, Volkl teaches that the

geometry of the forming tube can be modified also depending on the user's preference. The shaping tube can be configured with a different cross section (column 7, lines 1 – 5).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the apparatus of Volkl such that the cutter is a two-bladed cutter and the geometry is substantially cylindrical and symmetrical or oval, depending on the user's preference.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Volkl in view of Abler (U.S. 5,230,267). Volkl teaches the characteristics previously described but do not specifically teach that there is a smoothing belt and a shaping surface. It is noted, however, that Volkl teaches that subsequent to shaping and cutting, the formed meat patties can be passed to a delivery station such as a conveyor belt, by its own weight or by an additional ejector device (column 6, lines 35 – 38).

In a method to form and subsequently process meat or other food slices, Abler teaches the use of a smoothing belt used in conjunction with a conveyor (items 15 and 16 – figure 1). The smoothing belt functions to uncurl or ensure that the slices remain flat as they are transported on the conveyor.

Thus, it would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to configure the apparatus of Volkl with a conveyor belt and smoothing surface as taught by Abler, for the purpose of conveying the meat patties to

its final processing station, while at the same time, ensuring that the surface of the patties retain their flat shape or final shape.

### ***Response to Arguments***

15. Applicant's arguments, filed April 29, 2008 with respect to the prior art references of King, et al. and Kobayashi are found persuasive and thus, the rejections with respect to such references has been withdrawn.

However, Applicant's arguments with respect to the rejection(s) of claims 1 – 3, 5 and 8 – 17 as anticipated by Volkl, Rosenstone, et al. and Ackerman have been fully considered but are not found persuasive.

With respect to the reference of Volkl, Applicant argues that Volkl fails to teach a slit in the shaping tube body through which any cutting device could be introducible. Referring to Figure 3, the slit is that into which the cutter 65 has been introduced. The cutter 65 is introduced into a slit which is defined by a bottom surface 66 of the upper shaping tube. The calibration plate is beneath the slit into which the cutter is introduced. The cutter slices the meat which then "falls" into the calibration cavity 49. Furthermore, the shaping tube 55 is bounded on its left and right sides by walls. Thus, the Examiner maintains the rejection(s) as anticipated by Volkl.

With respect to the reference of Ackerman, Applicant argues that Ackerman fails to teach a forming space bounded by a wall and the wall including a slit. The Examiner disagrees. The "wall" of Ackerman is formed by the lower flanges, but the structures still

define a "wall." Furthermore, the "wall" includes a slit into which the cutter 22 is introduced. Thus, the Examiner maintains the rejection(s) as anticipated by Ackerman.

With respect to the reference of Rosenstone, et al., Applicant argues that Rosenstone, et al. fail to teach a forming space bounded by a wall and the wall including a slit. Though the Examiner agrees that the spacer plates are used to bound the forming space, the spacer plates still form a "wall" which delimit the forming space into which the bulk material is introduced. Furthermore, the "wall" still includes "a slit" into which the blade 16 is introduced. Thus, the Examiner maintains the rejection(s) as anticipated by Rosenstone, et al.

With respect to new claims 18 – 20, the Examiner has cited the reference of Volk to reject such claims.

### ***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARIA VERONICA D. EWALD whose telephone number is (571)272-8519. The examiner can normally be reached on M-F, 8 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Yogendra N Gupta/  
Supervisory Patent Examiner, Art Unit 1791

MVE